

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Grueneberg, et al.**

Examiner: CHONG, Kimberly.

Application No.: **10/574,416**

Art Unit: 1635

Filed: **March 31, 2006**

Title: **RETROVIRAL VECTORS FOR
DELIVERY OF INTERFERING RNA**

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)-(d)

Sir:

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) as of November 3, 2009, the issue date of U.S. Patent No. 7,612,195 and in light of the recent ruling in *Wyeth v. Dudas*, No. 07-1492, slip op. (D.D.C. Sept. 30, 2008) the Patentees submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(b)-(d).

This application is not subject to a terminal disclaimer.

U.S. Patent No. 7,612,195 issued on November 3, 2009. This request is being submitted within two months of the issue date of U.S. Patent No. 7,612,195, and complies with the deadline specified in 37 C.F.R. 1.705(d). In addition, given the recent ruling in *Wyeth*, which was decided on September 30, 2008, the Patentee could not have raised this issue prior to payment of the issue fee. Thus Patentees contend this request is timely.

The data available on PAIR indicates that U.S. Patent No. 7,612,195 has been granted 12 days of Patent Term Adjustment. Patentees submit that, due to the recent *Wyeth* decision, the correct Patent Term Adjustment should be 139 days. Patentee, therefore requests that U.S. Patent No. 7,612,195 be granted an additional 127 days of patent term.

Statement of the Facts and Explanation of Calculation

For purposes of this request and in keeping with the explanation provided in *Wyeth*, Patentees will refer to the "A delay" as examination delay under 37 C.F.R. 1.703(a). In the "A delay" the Patent Office delayed prosecution 127 days by issuing the first communication more than 14 months from filing or

May 31, 2007 to October 5, 2007 (the mailing of the first office). **Thus the total PTO "A delay" is 127 days.**

Delay due to applicant consists of 92 days in responding to the March 17, 2008 office action on September 17, 2008 and an additional 113 days of delay from September 17, 2008, the date our reply having an omission was filed until January 8, 2009, the date that our reply correcting the omission was filed. Thus total applicants delay is thus **205 days**.

The Patent Office delayed issuance of the patent by more than three years, and the period of "B delay" commences on March 31, 2009 (three year anniversary of the filing date) and ends on November 3, 2009 (the date of grant). **Thus the period of "B delay" is 217 days by applicant's calculation.**

Therefore, the Patent Office was responsible for a total of $127 + 217 = 344$ days of delay and the applicant is responsible for 205 days of delay. Applicants believe the proper patent term adjustment under *Wyeth* is $344 - 205 = 139$.

In light of the foregoing, the Patentees respectfully request that an additional 127 days of Patent Term Adjustment be added to the patent term for Patent Office delay, resulting in a total Patent Term Adjustment of 139.

The Commissioner is authorized to charge the \$200.00 fee set forth in §1.18(e) required by 37 C.F.R. §1.705(b)(1) to Deposit Account No. 18-1982. The Commissioner is also authorized to charge any additional fees required by this paper or credit any overpayment to Deposit Account No. 18-1982.

Respectfully submitted,

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